SUPREME COURT, U.S.
FILED
OCT 16 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-436

WALTER V. MEDENICA, a/k/a VOJESLAV MEDENICA,
Petitioner

v.

HOWARD H. CALLAWAY, Secretary of the United States Army,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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HOWARD H. CALLAWAY, Secretary of the United States Army,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Walter V. Medenica, a/k/a Vojeslav Medenica, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on August 27, 1974.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, affirming the judgment of dismissal rendered by the United States District Court for the Northern District of Alabama, is set out in the appendix, *infra,* at p. 1a and reported at —F.2d—.

The judgment of dismissal and the opinion of the United States District Court for the Northern District of Alabama is set out in the appendix, *infra,* at pp. 2a-6a.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on August 27, 1974. This Court has jurisdiction pursuant to 28 U.S. Code, Section 1254(1).

QUESTION PRESENTED FOR REVIEW

Whether petitioner can be denied prior enlistment status because the government is unable to identify his record of service with the U.S. Army Air Corps pursuant to Section 3254(1) of Title 10 of the U.S. Code notwithstanding the fact that he has adduced unrefuted evidence proving his status, absent a discharge.

FEDERAL STATUTORY PROVISIONS INVOLVED

Section 3254(1) of Title 10, U.S. Code:

> (1) Temporary enlistment in the Army entered into in time of war or of emergency declared by Congress shall be for the duration of the war or emergency plus six months.

STATEMENT OF THE CASE

Petitioner became a naturalized citizen of the United States during July of 1957. He resided in Nice, France as a Yugoslavian refugee immediately after World War II, and during June of 1945 he volunteered to join the United States Army Air Force 81st Airdrome Squadron which was stationed in Nice. He was accepted as an enlistee, issued GI uniforms, resided in the service barracks, was treated as and performed

the duties of an enlistee until February, March or April of 1946, when his Squadron terminated operations in Europe. He was at all times subject to military rules and treated by military personnel as an enlistee.

Prior to his alleged enlistment, petitioner had completed two years of formal college education and considered it his moral obligation to pay his debt to the American Armed Forces for liberating Europe. He at all times wore the standard uniform issued to all U.S. Army Air Force soldiers during his tenure with the 81st Airdrome Squadron and attached originals of photographs taken of him in uniform during his tenure in Nice as Exhibits "1"-"5" to Enclosure "1" of Exhibit "A" to his original complaint filed in the District Court on December 6, 1973. Petitioner's tenure with the U.S. Army Air Force ended during February, March or April of 1946, when the 81st Airdrome Squadron terminated operations in Nice, and he remained in Europe where he completed his formal college education in West Germany with a masters degree in civil engineering prior to immigrating to the United States in 1952.

In 1959 petitioner accepted a position as an engineer with the Army Ballistic Missile Agency of the United States Army at Redstone Arsenal in Huntsville, Alabama (subsequently reorganized in 1960 as Marshall Space Flight Center of the National Aeronautics and Space Administration). He petitioned the Department of the Air Force for veteran status during July of 1970 and its response thereto states that the responsibility for adjudicating claims for veteran preference has been delegated to employing agencies by the Civil Service Commission. He petitioned the

National Aeronautics and Space Administration for veteran preference status during January of 1971 and its response thereto advised him that the agency is unable to award veteran preference because he failed to submit official documentation proving active duty or separation from the uniformed services. Immediately thereafter he appealed NASA's response to the Board of Appeals and Review of the U.S. Civil Service Commission and its response thereto affirms the agency. He submitted his Petition for Declaration of Veteran Status to the Adjutant General of the United States Army during November of 1972 and sought a declaration recognizing his tenure of service in Nice as an enlistee, supplementing his petition with enclosures consisting of affidavits executed by former officers of the U.S. Army Air Force who served with him in the 81st Airdrome Squadron and who remember having served with him in particular, stating moreover that they were under the definite impression that he was an enlisted member of the U.S. Army Air Force between June of 1945 and February, March or April of 1946. A true and correct copy of his petition, including the affidavits, pictures depicting him wearing standard GI issue uniforms, and a copy of a pass issued to petitioner during his tenure in Nice by the Assistant Adjutant for the 81st Airdrome Squadron, which reflects Vojeslav Medenica (petitioner's name prior to July of 1957 when he officially changed his name to Walter Vojeslav Medenica as part of his U.S. naturalization procedure) and states that he, as a "soldier", will be governed by rules and regulations set up by military police, was attached as Exhibit "A" to petitioner's original complaint filed with the District Court. Affiant Aby A. Francisco, retired from the U.S. Armed Forces as a Lieutenant Colonel, is presently an in-

structor at North Michigan University in Marquette, Michigan. Affiant Bernard Byford is presently the owner of Byford Motors in McGregor, Texas. Affiant Broughton Van Veen is presently the owner of Van Veen and Company, manufacturers' representatives in Chicago, Illinois. Another affidavit attached to the petition to the Adjutant General, executed by G. Comlenac, presently the assistant to the president of International Chemical and Nuclear Corporation, states that affiant was an officer in the Royal Yugoslavian Army stationed in France during 1945, became associated with petitioner, and that to the best of his knowledge petitioner served as a soldier in the U.S. Army Air Force who at all times represented himself to be a member thereof. The Chief of the Army Reference Branch of the National Personnel Records Center in St. Louis, Missouri, responded to the petition during December of 1972 and states that the Army was unable to identify a record of petitioner's service with the U.S. Army Air Force.

Petitioner filed an action in the U.S. District Court for the Northern District of Alabama against the Secretary of the U.S. Army for judicial review of the decision of the Army Reference Branch, and the same was dismissed without prejudice on June 11, 1973 to the right of petitioner to pursue available administrative remedies.

Petitioner filed his petition with the Army Board for the Correction of Military Records (Exhibit "A" to his original complaint filed with the District Court) and the Executive Secretaries of the Army and Air Force Boards decided that jurisdiction rests with the Air Force Board for the Correction of Military Records. The Air Force Board for the Correction of

Military Records responded on November 19, 1973 and denied relief by stating that a careful consideration of his military record, together with such facts as have been presented by him, fails to establish a showing of probable error of injustice in petitioner's case pursuant to Section 1552(a) of Title 10 of the U.S. Code, which provides for the correction of military records when considered necessary to correct an error or remove an injustice.

Petitioner's original complaint filed on December 6, 1973, seeks to invoke the Court's jurisdiction pursuant to the provisions of Section 702 et seq. of Title 5 of the U.S. Code, and on March 22, 1974 the District Court filed its Order granting defendants' motion for summary judgment and dismissing the case with prejudice. The Court of Appeals affirmed per curiam on August 27, 1974.

REASON FOR GRANTING THE WRIT

I. The Court below has decided an important question of federal law which has not been, but should be, settled by this Court because it deprives petitioner of rights to obtain veterans preference status with his federal employing agency in denying him the equal application of Section 3254 of 10 U.S. Code by failing to recognize his temporary enlistment with the United States Army Air Corps in time of emergency immediately subsequent to World War II.

The District Court, affirmed per curiam on appeal, concluded that petitioner failed to show any evidence of arbitrariness and capriciousness on the part of the Air Force Board for the Correction of Military Records and that petitioner presented insufficient evidence to support an enlistment under Section 3254 of 10 U.S. Code. In support of its conclusion, the Court cites *Denton* v. *Samons,* 315 F. Supp. 279 (N.D. Cal. 1970), aff'd 483 F.2d 21 (9th Cir. 1973), which held

that judicial relief is not available absent a showing that the action of the Board for the Correction of Military Records was unsupported by substantial evidence.

The broader question is whether or not governmental standards are too rigid and inflexible to allow relief when justice demands the same, and *Citizens to Preserve Overton Park, Inc.* v. *Volpe,* 401 U.S. 402 (1971), clothes the district court with authority to engage in a substantial inquiry as to the reasons for the Board's failure to consider petitioner's evidence or even rationalize its existence, notwithstanding the fact that the government is unable to identify his record of service. The district court failed to analogize *Volpe* to the petitioner's case, and the one and only inference to be drawn is that petitioner did not prevail because he failed to produce one indispensable document—a discharge, a copy of which the government does not have in its possession.

Petitioner has alleged that he was accepted as an enlistee, but respondents have refused to acknowledge his prior enlistment status only on the basis of his inability to produce a discharge. A discharge is not important, nor conclusive, in resolving the question whether or not petitioner did enlist and whether or not he was eligible to enlist. This Court ruled in *United States* v. *Grimley,* 173 U.S. 147 (1890), and reiterated in *United States* v. *Union P. R. Co.,* 249 U.S. 354 (1918), that the taking of the oath of allegiance is the pivotal fact which changes the status of a recruit from that of civilian to that of soldier, and *Ex parte Beaver* (D.C. Ohio) 271 F. 493 (1921), decided that the United States alone may plead the disability of an enlistee, and that when he enlists he can not escape the liability thus incurred. Petitioner

has made the unrefuted statement, supported by affidavits of his former officers, that he did enlist, and since an indispensable incident to enlistment is the taking of the oath of allegiance, the only conclusion is that he served as a member of the Armed Forces pursuant to the provisions of Section 3254 (1) of 10 U.S. Code, which provide for temporary enlistment in the Army during time of emergency declared by Congress. The remaining, definitive issue, therefore, is why the government is not willing to favor petitioner's evidence with credibility.

The Board's adverse decision may be premised on concealed considerations. The ludicrous notion that a present admission of petitioner's prior enlistment may result in a dilemma for the government, which may be prohibited from rendering a retroactive discharge, because the same would then be concomitant with all retroactive benefits, is being waived in favor of the more substantial presumption that the government must now disclaim his prior enlistment lest it justify it at the expense of embarrasing this Country for having allowed General George Patton, Jr., to ponder the possibility of breaching our agreement at Potsdam. It is inconceivable that four former military officers, three having served with the United States Army Air Force and one with the Royal Yugoslavian Army, would lie in their affidavits in order to promote petitioner's endeavor. The affidavits speak for themselves and the government refuses to recognize them because of a prior "bureaucratic military bungle" in failing to provide petitioner with the proper discharge papers when it terminated operations in Nice. The inquiry logically addresses itself to the reason for accepting petitioner, as well as others

like him, for service in Nice shortly *after* the end of World War II, and the answer may be gleaned from excerpts in encyclopedias and books which depict historical reviews of General Patton and his vociferous aim to go to war against Russia shortly after the end of the war when he was Military Governor of Bavaria, Germany. See 21 Encyc. Am. (1970). In SEMMES: PORTRAIT OF PATTON 283 (1955); Appleton-Century-Crofts, Inc., General Harry H. Semmes describes his impression of General Patton's far-sighted analysis of our approaching difficulty with Russia back in 1945, "when so few people saw the danger". FARAGO: PATTON, ORDEAL AND TRIUMPH, 807-9 (1963); I. Obolensky, Inc., corroborates AYER: BEFORE THE COLORS FADE, PORTRAIT OF A SOLDIER, GEORGE S. PATTON, JR., 230-3 (1964); Norman S. Berg, in which Fred Ayer, Jr., relates General Patton's conversations with his superiors immediately after World War II when he endeavored to combine the allied forces with the Czech, Austrian, Hungarian and even German forces against the Russians. As Third Army Commander, Patton intended to go to war against Russia and our Armed Forces considered that possibility which was not abandoned until after he died in December of 1945.

To merit favorable treatment petitioner is required to present sufficient evidence to support an enlistment under Section 3254 notwithstanding the requirement that the government is to maintain records of enlistments and discharges of former members of the Armed Forces. If any of the millions of discharged Americans, having lost his discharge papers, was to be advised that there are no records indicating a prior enlistment and subsequent discharge, quite naturally,

he would assemble and produce documentation to support his claim, which the government would reject when it is unable to identify his record of service. His one and only recourse would be to present his grievance to the courts and seek judicial review, and the courts would abandon their responsibility to the individual and cooperate with the government in shearing him of his earned rights and privileges when "rubber stamping" administrative decisions which are arbitrary and capricious because they are premised on the ostensible policy that recourse will summarily be denied when government records are lost or destroyed.

CONCLUSION

For the foregoing reason the petition for writ of certiorari should be granted.

Respectfully submitted,

DIETER J. SCHRADER
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Huntsville, Alabama 35801
Attorney for Petitioner

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-2266

Summary Calendar*

WALTER V. MEDENICA a/k/a VOJESLAV MEDENICA,
Plaintiff-Appellant,

v.

HOWARD H. CALLAWAY, Secretary of the United States Army, *Defendant-Appellee.*

Appeal from the United States District Court for the Northern District of Alabama

(August 27, 1974)

Before WISDOM, GOLDBERG and GEE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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* Rule 18, 5 Cir., Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

[1] See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

[Filed in Clerk's Office
Northern District of Alabama
March 22, 1974
William E. Davis
Clerk, U.S. District Court
By: _____
Deputy Clerk]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
NORTHEASTERN DIVISION

Civil Action No. 73-L-1152

WALTER V. MEDENICA, *Plaintiff*
v.
HOWARD H. CALLAWAY, ET AL., *Defendants*

Memorandum Opinion

This cause is before the Court on cross motions for summary judgment. Although the plaintiff invokes 28 U.S.C. § 2201, and 5 U.S.C. § 702, the Court construes this action to be a complaint brought under 28 U.S.C. § 1361 and finds it has subject matter jurisdiction within the limited confines of that statute. The Court is additionally guided by the procedural provisions of 5 U.S.C. § 701, *et seq.*, of the Administrative Procedure Act, and 10 U.S.C. § 1552(a). *Ashe* v. *McNamara*, 355 F.2d 277 (1st Cir. 1965).

The material facts are not in dispute. The plaintiff, a National Aeronautics and Space Administration (NASA) civil servant (GS-14/7 level), seeks to compel the Secretaries of the Army and Air Force to grant a prior enlistment recognition under 10 U.S.C. § 3254, which would result in the award of "veteran preference status." The Air Force Board for the Correction of Military Records, hereinafter referred to as SAFCB, declined to grant the plaintiff prior enlistment recognition in a petition brought under 28 U.S.C. § 1552 to "correct an error or remove an

injustice." Whether such declination by the SAFCB is to be upheld is the question presented for this Court's very limited review.

Plaintiff claims that in June, 1945, as a Yugoslav refugee in France, he volunteered to join, and was accepted, as an enlistee in the 81st Airdrome Squadron, United States Army Air Force (AAF), and was treated as, and performed the duties of, an enlisted man until February, March or April, 1946, when the 81st Airdrome Squadron terminated operations in Europe. Remaining in Europe (West Germany) until 1952, plaintiff then immigrated to the United States where he was naturalized in 1957. Plaintiff asserts that his purported enlistment was made pursuant to 10 U.S.C. § 3254, which provides for temporary enlistments for non-U.S. citizens during time of war or emergency. In his application, plaintiff has submitted a facsimile of a purported pass issued to him, and photographs taken of him in uniform during his term with the 81st Airdrome Squadron, as well as affidavits by people associated with during his alleged enlistment. These same exhibits were submitted in support of his SAFCB application, which was denied on November 19, 1973.

Prior to the SAFCB determination, plaintiff was unsuccessful in four other attempts to obtain veteran preference status. By letter of January 26, 1971, NASA advised plaintiff that his January 17, 1971, petition could not be granted because he had failed to submit documentation proving active duty or separation from the military. The Board of Appeals and Review of the Civil Service Commission also denied plaintiff's request for the same reasons by letter of March 25, 1971. Plaintiff's November 3, 1972, petition to the Adjutant General of the U.S. Army was responded to by the Chief of Army Reference Branch of the National Personnel Records Center, St. Louis, Missouri, stating his inability to identify a record of plain-

tiff's service with AAF. Plaintiff's fourth attempt came in a January 4, 1973, suit against the Secretary of the Army. This action resulted in a January, 1973, order of this Court dismissing the suit without prejudice, to allow plaintiff to first exhaust his administrative remedies by petitioning the Board for the Correction of Military Records. The SAFCB denial of November 19, 1973, immediately preceded institution of the action *sub judice.*

At the outset, it should be noted that although sovereign immunity protects the U.S. Army and U.S. Air Force from suit by plaintiff, cf. *Blackmar* v. *Guerre,* 342 U.S. 512, 72 S. Ct. 410, 96 L.Ed. 534 (1972), subject matter jurisdiction over the respective Secretaries is permitted under 28 U.S.C. § 1361 to review ministerial acts and procedures effected pursuant to 10 U.S.C. § 1552(a) and 5 U.S.C. § 701, *et seq. Ashe* v. *McNamara, supra.*

It is within the narrow scope of review provided by 28 U.S.C. § 1361 that the Court inquires into the acts of the SAFCB. The jurisdiction invested in the district courts by this section is simply to scrutinize:

> "any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

The legislative history of Section 1361 reveals that the purpose of this section is "not to direct or influence the exercise of discretion of the officer or agency in making the decision." *1962 Code Cong. & Ad. News,* at 2784-85 (87th Cong. 2d Sess.). Moreover, it is a settled principle of administrative law that personnel decisions by agencies are discretionary acts that preclude mandamus, unless the agency is shown to have acted arbitrarily, capriciously or without substantial compliance with agency regulations. *Armstrong* v. *U.S.,* 405 F.2d 1275 (Ct. Cl. 1969), *cert. denied,* 395 U.S. 934 (1969). More specifically, the District

Court in *Denton* v. *Samans*, 315 F. Supp. 279 (N.D. Cal. 1970), aff'd 483 F.2d 21 (9th Cir. 1973), stated:

> "No judicial relief is available from action of the Board for the Correction of Military Records concerning the correction of discharge errors or injustices, absent a showing that the action was unsupported by substantial evidence."

To warrant the substitution by this Court of its judgment for that of the SAFCB, the plaintiff has the burden of producing cogent and clearly convincing evidence to prove the Board's decision was "arbitrary, capricious or erroneous in law." *Wood* v. *U.S.*, 176 Ct. Cl. 737, 743 (1966).

Having considered the briefs of counsel and the certified record of proceedings before the SAFCB, the Court concludes that plaintiff has failed to show any evidence of arbitrariness or capriciousness on the part of the SAFCB. Moreover, this Court agrees with the Board that there was insufficient evidence presented by the plaintiff to support an enlistment under 10 U.S.C. § 3254.

For the foregoing reasons, the defendants' motion for summary judgment is granted and the plaintiff's motion for summary judgment is denied. A separate order will be entered.

DONE this 22nd day of March, 1974.

/s/ SEYBOURN H. LYNNE
Senior Judge

[Filed in Clerk's Office
Northern District of Alabama
March 22, 1974
William E. Davis
Clerk, U.S. District Court
By: _____
Deputy Clerk]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
NORTHEASTERN DIVISION

Civil Action No. 73-L-1152

WALTER V. MEDENICA, *Plaintiff*

v.

HOWARD H. CALLAWAY, ET AL., *Defendants*

Order

In conformity with and pursuant to the Memorandum Opinion contemporaneously filed herewith,

It is ORDERED, ADJUDGED and DECREED by the Court that defendants' motion for summary judgment is hereby granted, and plaintiff's motion for summary judgment is hereby denied.

It is further ORDERED by the Court that this case be and the same is hereby dismissed, with prejudice, with costs taxed against the plaintiff.

DONE this 22nd day of March, 1974.

/s/ SEYBOURN H. LYNNE
Seybourn H. Lynne
Senior Judge

DEPARTMENT OF THE AIR FORCE
WASHINGTON 20330

OFFICE OF THE ASSISTANT SECRETARY

SAFCB 73-2828

19 November 73

Dear Mr. Medenica:

Reference is made to your request for correction of your military records under the provisions of Section 1552, Title 10, United States Code (70A Stat 116).

The administrative regulations and procedures established by the Secretary of the Air Force for the guidance of the Board provides that an application may be denied where the applicant has not submitted sufficient evidence to establish a showing of probable error or injustice in the case.

I regret to advise you that a careful consideration by the Board of your military record, together with such facts as have been presented by you, fails to establish a showing of probable error or injustice in your case. However, you are privileged to submit new and material evidence for the consideration of the Board. In the absence of such additional evidence tending to show the commission of an error or injustice, no further action on your application is contemplated.

BY DIRECTION OF THE CHAIRMAN:

/s/ M. T. MARTIN
M. T. Martin
Executive Secretary
Air Force Board for the
Correction of Military Records

Mr. Walter V. Medenica
c/o D. J. Schrader, Esquire
Suite 400
State National Bank Bldg.
Huntsville, Alabama 35801

EXHIBIT "B"

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-436

WALTER V. MEDENICA, A/K/A VOJESLAV MEDENICA,
PETITIONER

v.

HOWARD H. CALLAWAY, SECRETARY OF THE ARMY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner contends that the administrative determination that he is not entitled to veterans' preference status is arbitrary and capricious.

Petitioner, an employee of the National Aeronautics and Space Administration, claims that in June 1945, when he was a Yugoslav citizen living in France, he was accepted as an enlistee in the United States Army Air Force, 81st Airdrome Squadron, in which capacity he served until early 1946. In 1971 he filed a request for veterans' preference status, based on that alleged service with the Army Air Force. By letter dated January 26, 1971, NASA denied the application on the ground that petitioner had failed to submit any documentation to support his claim. On appeal to

the Board of Appeals and Review, petitioner submitted a Class A pass allegedly issued to him as an enlistee. The Board denied the application, stating that the pass was not evidence of active duty status and that there was no government record of petitioner's alleged service.

In November 1972, petitioner submitted a Petition for Declaration of Veteran's Status to the Adjutant General of the United States Army. Petitioner enclosed photographs of himself in military uniform, a copy of the Class A pass, and affidavits by three former members of the 81st Airdrome Squadron and a former member of the Royal Yugoslav Army. Each affidavit stated only that the affiant "was under the impression" that petitioner had served in the United States armed services or that "to the best of [the affiant's] knowledge" petitioner had so served. Petitioner was notified by the Chief of the Army Reference Branch of the National Personnel Record Center in St. Louis, Missouri, that there was no record of his alleged service in the armed forces.

Petitioner then filed a suit against the Secretary of the Army; that was subsequently dismissed without prejudice to permit petitioner to exhaust his administrative remedies by filing a petition with the Board for Correction of Military Records. The Board denied petitioner's application in November 1973 for lack of sufficient evidence, and petitioner then instituted this action in the United States District Court for the Northern District of Alabama. The district court granted the government's motion for summary judgment, holding that the administrative determination had not been "arbitrary, capricious or erroneous in law" (Pet. App. 5a). The court of appeals affirmed *per curiam* without opinion (Pet. App. 1a).

This case presents no issue warranting review by this Court. The determination by the Board for the Correction of Military Records must be upheld unless it is "arbitrary and capricious." *Peppers* v. *United States Army*, 479 F.2d 79, 84 (C.A. 4); *Sanford* v. *United States*, 399 F.2d 693 (C.A. 9). Petitioner presented no documentation showing either an enlistment or a discharge from the armed forces, and an examination at the military record center revealed no record of his alleged enlistment. The affidavits on which petitioner relies show only that the affiants and petitioner believed that petitioner was a member of the United States armed forces. Their unsubstantiated belief does not warrant reversal of the decisions below.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.

DOJ-1974-12